

burdens are more than offset by the elimination of the old requirements mandating license modification every time there was a change of even one mobile unit and whenever the number of pagers increased or decreased by fifty units.

#### Summary of Report and Order

1. In this Report and Order, we eliminate or modify various regulations that impose unnecessary burdens on private land mobile licensees. First, we are eliminating the requirement in 47 CFR 90.179(e) that licensees of shared systems that do not individually license their end users maintain and periodically furnish detailed information about their customers. Second, we are replacing the requirement in 47 CFR 90.135 (a)(6) and (a)(5) that certain private land mobile licensees file license modification applications when there is a change in the number of authorized pagers or mobiles, respectively, with less burdensome procedures that will yield more accurate spectrum utilization information.

2. After considering the unanimity of comments submitted recommending elimination of the end user list requirement, we have decided to adopt the proposal in the Notice of Proposed Rule Making (57 FR 20069 (May 11, 1992)) in this proceeding and eliminate the end user lists. The end user list requirement should be eliminated because the information thus elicited is redundant of information we are able to collect through the less burdensome license modification process.

3. Our current license modification procedures require reporting a change in even a single mobile or 50 pagers. We replaced these requirements with procedures requiring information about numbers of mobiles or pagers only upon license modification and at license renewal. Obtaining this information in connection with modifications and renewals is likely to result in a more accurate base of information to support frequency coordination and licensing than the current system. This new procedure will impose a minimal regulatory burden on both licensees and the Federal Communications Commission, and will be realistically enforceable.

#### Final Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

##### Need and Purpose of the Action

5. The Commission is adopting these rule changes to eliminate unnecessary regulatory burdens on private land

mobile licensees, many of whom are small business entities. This action will provide more efficient and effective licensing procedures thus serving the public, the industry and the Commission.

#### Issues Raised in Response to the Initial Regulatory Flexibility Analysis

6. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

#### Significant Alternatives Considered and Rejected

7. All significant alternatives have been addressed in this Report and Order.

#### List of Subjects in 47 CFR Part 90

Reporting and recordkeeping requirements.

#### Amendatory Text

47 CFR part 90 is amended as follows:

#### PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 332, 48 Stat. 1069, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.127 is amended by revising paragraph (c) and adding new paragraph (e) to read as follows:

§ 90.127 Submission and filing of applications.

(c) Each application shall limit its request for authorized mobile transmitters and paging receivers to:

(1) Mobile transmitters and paging receivers that will be installed and operated immediately after authorization issuance.

(2) Mobile transmitters and paging receivers for which purchase orders have already been signed and which will be in use within eight months of the authorization date.

(e) All applications for modification of license and renewal of license must include the number of mobile transmitters and paging receivers in use on the licensed facilities.

3. Section 90.135 is amended by removing paragraph (a)(6) and by revising paragraph (a)(5) to read as follows:

§ 90.135 Modification of license.

(a) . . .

(5) Change in the authorized location or number of base stations, fixed, control or, for systems operating on non-

exclusive assignments in the 470-512 MHz, 800 MHz or 900 MHz bands, a change in the number of mobile transmitters, or a change in the area of mobile operations from that authorized.

4. Section 90.175 is amended by adding new paragraph (g) to read as follows:

§ 90.175 Frequency coordination requirements.

(g) Application for modification of license that only involves a change in the number of mobile transmitters or paging receivers from that authorized, except for systems operating on non-exclusive assignments in the 470-512 MHz, 800 MHz or 900 MHz bands, need not be accompanied by evidence of frequency coordination, but a copy of these applications must be sent to the applicable frequency coordinator at the same time they are filed with the Commission.

§ 90.179 (Amended)

5. Section 90.179 is amended by removing paragraph (e) and redesignating paragraphs (f) and (g) as (e) and (f), respectively.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-26087 Filed 10-27-92; 8:45 am]

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#### DEPARTMENT OF TRANSPORTATION

##### Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 174, 175, 176, and 177

[Notice No. 92-12]

##### Formal Interpretation of Regulations Issued Under the Hazardous Materials Transportation Act

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interpretation of regulations.

**SUMMARY:** This notice publishes a formal interpretation of the registration requirements for offerors and transporters of hazardous materials subject to the Hazardous Materials Regulations (HMR) issued under the Hazardous Materials Transportation Act (HMTA). This interpretation describes activities which subject an "offeror" or "transporter" to the hazardous materials registration requirements of the HMTA. This

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Interpretation has been rendered by the Chief Counsel of RSPA. This interpretation is being published to provide the public with better understanding and awareness of activities which are covered by the hazardous materials registration requirements of the HMTA. It may be particularly useful to industry members and State and local governmental officials involved in or regulating hazardous materials transportation.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Stokes Molinar, Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001 (Tel. (202) 366-4400).

**SUPPLEMENTARY INFORMATION:** As part of its implementation of the HMTA, 49 App. U.S.C. 1801 et seq., RSPA issues the regulations contained in the HMR (49 CFR parts 171-180). Informal interpretations of the HMR frequently are issued by the Standards Division of RSPA's Office of Hazardous Materials Safety (OHMS).

Less frequently, RSPA's Chief Counsel issues formal interpretations of the HMR. These interpretations generally involve multi-modal issues and are coordinated with other DOT agencies which, together with RSPA, enforce the HMTA. (Those agencies are the U.S. Coast Guard, the Federal Aviation Administration, the Federal Highway Administration and the Federal Railroad Administration.)

Publication of this interpretation should promote a better understanding of, and improved compliance with, the HMR. This opinion is available, and future interpretations will be available, on the OHMS Hazardous Materials Information Exchange (HMIEX) (1-800-367-9592).

Issued in Washington, DC, on October 19, 1992, under the authority delegated in 49 CFR part 106, appendix A.

Alan L. Roberts,  
Associate Administrator for Hazardous  
Materials Safety.

Interpretation No. 82-1-RSPA

Issued: October 19, 1992.

#### Sources:

Joanna L. Johnson, Esquire, Counsel,  
Petroleum Marketers Association of  
America, Washington, DC.  
Mr. David G. Dwinell, President, QTI Service  
Corporation, New Berlin, WI.

#### Facts

Both parties request clarification of the term "offeror" for purposes of determining whether a party is required to register with the Research and Special Programs Administration

(RSPA) pursuant to the hazardous materials transportation registration requirements of 49 CFR 107.601-107.620 (57 FR 30820, July 9, 1992; 57 FR 37900, August 21, 1992; See also 57 FR 33418, July 28, 1992).

Petroleum Marketers Association of America (PMAA) requests clarification of the requirement that all motor fuel and heating fuel marketers who "offer" for transportation petroleum products in bulk packagings, containers, or tanks having a capacity equal to or greater than 3,500 gallons, must register. PMAA requests that RSPA issue an interpretation illustrating the activities which constitute "offering." More specifically, PMAA questions whether the act of "selling," standing alone, is an "offeror" activity which will subject a petroleum marketer to the registration requirements.

QTI Service Corporation (QTI) requests clarification of the registration requirement as it applies to "ICC Licensed property brokers," which QTI describes as "perform[ing] the same role for freight that a travel agent fills for passengers in air transportation." QTI states that property brokers do not take possession of freight, execute a bill of lading, publish a tariff, or quote a rate. QTI further states that property brokers "are not considered 'shippers' for purposes of the Motor Carrier Act." Finally, QTI asks if DOT would require a property broker to place its "DOT ID Number" on each bill of lading covering hazardous materials for which it arranges a sale.

Additionally, numerous telephone inquiries have been received by RSPA, asking whether persons who load, unload, or store hazardous materials are subject to the registration rule.

#### Interpretation

The hazardous materials transportation registration rule mandates registration for persons who offer or transport certain hazardous materials in commerce. An "offeror" or "transporter" for purposes of the registration rule is determined in the same manner as an "offeror" or "transporter" for purposes of the HMR generally. See other relevant formal interpretations at 55 FR 6758 (February 28, 1990).

#### Determination of "Offeror" Status

To address the "offeror" inquiries of PMAA and QTI, it is necessary to determine whether the respective fuel marketer or freight broker undertakes, attempts to undertake, or is obligated to perform any specific functions related to requirements under the Hazardous Materials Regulations (HMR), 49 CFR

parts 171-180. Each marketer's or broker's activities must be examined to ascertain whether any "offeror" functions are involved. This determination is made on a case-by-case basis and takes into account all relevant facts.

While hazardous materials ownership and contractual assignment of functions are factors relevant to the determination of "offeror" status, they are not conclusive. The same is true of "selling" motor fuel and heating fuel, or arranging the sale of hazardous materials which will be transported in commerce. Factors considered in determining a party's "offeror" status include functions actually performed or undertaken by the party, and functions which the party contracts to perform. Past practices of the parties are also considered because they provide evidence of the parties' division of functions.

"Offeror" functions include, but are not limited to, selection of the packaging for a regulated hazardous material, physical transfer of hazardous materials to a carrier, classifying hazardous materials, preparing shipping papers, reviewing shipping papers to verify compliance with the HMR or their international equivalents, signing hazardous materials certifications on shipping papers, placing hazardous materials markings or placards on vehicles or packages, and providing placards to a carrier.

#### Determination of "Transporter" Status

The Hazardous Materials Transportation Uniform Safety Act (HMTUSA) significantly amended the Hazardous Materials Transportation Act (HMTA) and required the registration of those who transport certain hazardous materials or cause those hazardous materials to be transported in commerce (49 app. U.S.C. 1805(c)). The applicable regulation in the HMR implements this statutory registration requirement and applies it to persons who offer those hazardous materials for transportation or transport them in foreign, interstate, or intrastate commerce (49 CFR 107.601). The words "transport" and "transportation" are defined in the HMTA to mean "any movement of property by any mode, and any loading, unloading, or storage incidental thereto" (49 app. U.S.C. 1802(15)).

#### Conclusion

A person undertaking no "offeror" or "transporter" activities is not subject to the RSPA registration requirements. However, if a person undertakes, attempts performance of, or is obligated

to perform, any offeror or transporter activities related to the specified hazardous materials, then that person must register. Further, any person who loads, unloads, or stores the specified hazardous materials incidental to transportation is subject to the registration requirements of the HMR.

PMAA and QTI each submitted hypothetical fact patterns concerning which activities constitute an "offering" for purposes of the RSPA registration requirements. Further, the telephonic inquiries received by RSPA raised similar questions concerning the "transporting" of hazardous materials. These "offeror" and "transporter" questions are set forth below, followed by RSPA's response.

#### Fact Pattern #1

A is a heating fuel marketer, who buys fuel from B and sells it to C. A does not own transport vehicles, and utilizes common carriers to deliver the fuel which it sells. A is similar to a broker, in that it never takes physical possession of the fuel which it sells.

**Question:** Is the act of selling, standing alone, sufficient to subject A to RSPA's hazardous materials registration rule?

**Answer:** Selling a hazardous material of the type and in a quantity covered by the RSPA hazardous materials registration rule will not, standing alone, subject a not-in-possession marketer to the rule's registration requirement. However, if the marketer performs, attempts to perform, is obligated to perform, or agrees to perform any offeror or transporter function, then the marketer must register. If, for example, A prepares the shipping papers for the fuel, makes hazardous materials certifications on the shipping papers, places hazardous materials markings or placards on the transport vehicle, or loads or unloads the transport vehicle, or determines that the packaging is authorized for the specific hazardous material (see 49 CFR 173.22(a)(2), (3)), then A must register.

#### Fact Pattern #2

X, an "ICC licensed property broker," arranges the sale of a hazardous material. X does not take possession of the hazardous material, execute shipping papers, classify the material, or assist in loading, unloading, or storage incidental to shipment of the hazardous material. Further, X does not select the carrier which will transport the material.

**Questions:** Is the act of arranging the sale of a hazardous material, standing alone, sufficient to subject X to the hazardous materials registration rule?

Must X place its registration number on its bill of lading?

**Answer:** Again, arranging or facilitating the sale of a hazardous material of a type and in a quantity which is covered by the HMR will not, standing alone subject a not-in-possession property broker to the RSPA hazardous materials registration rule. However, if the broker performs, attempts to perform, is obligated to perform, or agrees to perform any offeror or transporter functions, the broker must register. If, for example, X prepares the shipping papers for the hazardous material, makes hazardous materials certifications on the shipping papers, places hazardous materials markings or placards on the transport vehicle, or loads or unloads the transport vehicle, then X must register.

If X is an offeror subject to the DOT registration rule, it is not required to place its DOT registration number on any bill of lading. If X is a transporter and must register, it is not required to place its hazardous materials registration number on its bills of lading. However, 49 CFR 107.620 mandates maintenance of a copy of the transporter's registration certificate at its principal place of business. Additionally, it requires that:

After January 1, 1993, each motor carrier subject to the requirements of this subpart must carry a copy of its current Certificate of Registration issued by RSPA or another document bearing the registration number identified as the "U.S. DOT Hazmat Reg. No." on board each truck and truck tractor (not including trailers and semi-trailers) used to transport hazardous materials subject to the requirements of this subpart. The Certificate of Registration or document bearing the registration number must be made available, upon request, to enforcement personnel. 57 FR 37900, 37902 (August 21, 1992).

An August 21, 1992 rule delayed until January 1, 1993, the requirement that transporters carry proof of registration in their vehicles. However, this delay did not apply to the September 18, 1992 deadline for registration and maintenance of a copy of the Certificate of Registration at a motor carrier's principal place of business. 57 FR 37900, 37901 (August 21, 1992).

#### Fact Pattern #3

M, a foreign manufacturer of explosives, sends a shipment of explosives on a vessel to the United States. Upon arrival of the shipment at a U.S. port facility, S, a stevedoring company, off-loads the shipment and places it on a chassis for through-shipment to its ultimate destination.

**Question:** Assuming that the explosives are hazardous materials

under the HMR, is the act of off-loading the hazardous material and placing it on a chassis for through-shipment to its ultimate destination sufficient to subject a stevedoring company to the requirements of the hazardous materials registration rule?

**Answer:** Yes, the HMTA states that the definition of "transports" and "transportation" includes "any movement of property by any mode, and any loading, unloading, or storage incidental thereto." (49 app. U.S.C. 1802(15)) If S loads or unloads the explosives incidental to transportation, it is subject to the registration rule.

#### Fact Pattern #4

Upon the arrival of a ship in a U.S. port facility, T, a stevedoring company, off-loads a shipment of explosives, and places it in temporary storage in its facilities awaiting through-shipment to an ultimate destination.

**Question:** Assuming that the explosives are hazardous materials under the HMR, does the storage activity by the stevedoring company require it to register?

**Answer:** T is subject to the registration requirements of the HMR. As indicated above, this storage is incidental to the movement of the explosives, and T is, therefore, a transporter of the explosives.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AB06

#### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant *Isoetes louisianensis* (Louisiana Quillwort)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Service determines *Isoetes louisianensis* (Louisiana quillwort) to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. This small plant is only known to exist in Washington and St. Tammany Parishes, Louisiana. Threats to the species include timber harvest and gravel mining without Best Management Practices, and any other activity that would affect the hydrology